IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.07.2007

CORAM :

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

Tax Case (Appeal) No.1075 of 2007

The Commissioner of Income-tax,
Tamil Nadu-III, Madras. .. Appellant

Vs.

S.Ramaamirtham .. Respondent

Appeal under Section 260A of the Income-tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Chennai Bench 'C', Chennai in I.T.A. No.778(Mds)/2005 dated 11.01.2007 for the assessment year 2000-2001 against the order of the Commissioner of Income Tax (Appeals) IV dated 06.01.2005 and made in ITA.No.39/04-05 against the order of the Assistant Commissioner of Income Tax Circle II, Chennai - 34, dated 31.03.2004 in GIR.No.231213/R/00-01 ACII PAN.No.AADPRO3697 Assessment year 2000-2001.

For Appellant : Mr.J.Naresh Kumar,
Standing Counsel for
Income-tax Department

JUDGMENT

(Judgment of the Court was delivered by
P.P.S.Janarthana Raja, J.)

This appeal is filed under Section 260A of the Income Tax Act, 1961 by the Revenue, against the order of the Income Tax Appellate Tribunal, Chennai Bench 'C', Chennai in I.T.A. No.778(Mds)/2005 dated 11.01.2007, raising the following substantial question of law:-

> "Whether on the facts and in the circumstances of the case, the Income-tax Appellate Tribunal was right in law in confirming the order of the Commissioner of Income-tax (Appeals), the profit earned on sale of surplus shares will attract capital gains, even though profit made on sale of shares is assessable as business income based on materials available on record?"

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2. The facts leading to the above substantial question of law are as under:-

The assessee is a registered share and stock broker of Madras Stock Exchange Limited, carrying on the business under the name and style of M/s.Brilliant & Co., mainly deriving income from house property, business, capital gains and also from interest and dividend. The relevant assessment year is 2000-2001 and the corresponding accounting year ended on 31.03.2000. The assessee filed his Return of income on 30.10.2000 admitting a total income of Rs.5,93,96,140/-. The Assessing Officer was of the view that since the assessee is a share broker, the income derived from the sale of shares should be assessed only under the head "profits and gains of business". Hence, the Assessing Officer issued notice under Section 148 of the Income-tax Act ("Act" in short) and completed the assessment holding that income from sale of shares is assessable only under the head "profits and gains of business". Aggrieved by the order, the assessee filed an appeal to the Commissioner of Income-tax (Appeals) ("CIT(A)" in short). The CIT(A) allowed the appeal and directed the Assessing Officer to treat the surplus earned by the assessee on the sale of shares, under the head "capital gains". Aggrieved, the Revenue filed an appeal to the Income-tax Appellate Tribunal ("Tribunal" in short). The Tribunal dismissed the Revenue's appeal and confirmed the order of the CIT (A). Hence the present tax case by the Revenue.

3. Learned Standing Counsel appearing for the Revenue submitted that the Tribunal has erred in holding that the profit realised by the assessee should be assessed only under the head "capital gains". It is also further submitted that the Tribunal ought to have appreciated that the assessee is dealing in shares and hence the profit realised by the assessee should be assessed only under the head "profits and gains of business". Therefore, the Assessing Officer is justified in treating the income derived from sale of shares under the head "profits and gains of business".

4. Heard the counsel. On facts, it was found that the assessee has been maintaining separate books of account for the trading in shares as well as investments in shares. The assessee is carrying on the business only in the name and style of "Brilliant and Company". The surplus earned from "Brilliant and Company" has been shown as business income. The payments in shares have been done by the assessee in his personal account. Further it was found that the assessee has been holding shares for a long time and has been utilising the surplus funds only for the investments. In earlier years also, the assessee has been showing only capital gains on similar transactions and the same has been accepted by the Revenue. There is nothing in law which prohibits a trader in shares to invest in shares. The intention of the assessee is relevant to determine whether he is carrying on the business in shares or investments. On facts, both the first appellate authority as well as the Tribunal correctly held that the surplus derived from the sale of shares has to be assessed under the head

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"capital gains". The said finding is based on valid materials and evidence and the order of the Tribunal is not a perverse one. The concurrent finding given by both the authorities below is based on valid materials and evidence. In the case of Commissioner of Income-tax Vs. P.Mohanakala [2007] 291 ITR 278 (SC), the Supreme Court held that whenever there is a concurrent finding by the authorities below, no interference should be called for by the High Court. Under these circumstances, we do not find any error or legal infirmity in the order of the Tribunal so as to warrant interference.

5. In view of the foregoing reasons, no substantial question of law arises for consideration of this Court and accordingly, the tax case is dismissed. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1. The Income-tax Appellate Tribunal,
   Chennai Bench 'C', Chennai.

2. The Secretary,
   Central Board of Direct Taxes,
   New Delhi.

3. The Commissioner of Income-tax (Appeals) VI,
   Chennai-600 034.

4. The Assistant Commissioner of Income-tax,
   Circle-II, Chennai-34.

5. The Assistant Registrar,
   Income-Tax Appellate Tribunal
   Rajaji Bhavan, III Floor,
   Besant Nagar, Chennai - 90.

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1 cc To Mr.Pushya Sitaraman, Sr.Standing Counsel for I.T.Cases, SR.42409.

T.C.(A) No.1075 of 2007

AKR(CO)
RVL 27.07.2007

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